

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN RAYMOND AST,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

No. 2:21-cv-01195-KJM-JDP (HC)

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 1, 2021, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff did not file objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”).


1 The court has reviewed the file and adopts the Magistrate Judge's recommendation to  
2 dismiss the claim for ineffective assistance of counsel.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Respondent's motion to dismiss, ECF No. 13, is granted and petitioner's ineffective  
5 assistance of counsel claim is dismissed as unexhausted. This action will proceed only on  
6 petitioner's claims for instructional error and failure to stay his convictions;

7 2. This matter is referred back to the assigned magistrate judge for all further pretrial  
8 proceedings.

9 DATED: October 11, 2022.

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12 CHIEF UNITED STATES DISTRICT JUDGE  
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